



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

James B. Melesky

Appln. No. 10/024,478

Filed: 21 December 2001

For: INSULATION COVER FOR ATTIC  
CLOSURES

Art Unit: 3637

Examiner: A. Phi Dieu Tran

Docket No.: 82/1376US  
Formerly: 13811

Commissioner for Patents  
Alexandria, VA 22313

**Supplemental Rule 132 Declaration**  
**(Secondary Considerations of Non-obviousness)**

Being of legal age, I, James B. Melesky, declare and state as follows:

- 1) This declaration is to provide additional material to establish secondary considerations of non-obviousness in the above referenced application and is supplemental to the Rule 132 Declaration previously filed in this case on July 27, 2005.
- 2) I am the inventor of the above referenced application and familiar with its disclosure and claims. I am also the President of ESS Energy Products, Inc (f/k/a Energy Sentry Solutions, Inc.) which manufactures and sells a device under the Trademark "The Energy Guardian." I am familiar with the design of The Energy Guardian™.
- 3) I have reviewed claim 14 of the above referenced application, as amended, and believe that The Energy Guardian™ still embodies the elements of that claim as currently amended.
- 4) I have attached hereto additional exhibits demonstrating the perspective of persons knowledgeable in the art, who believe the invention to be an innovative step beyond the prior art solving a long-felt need in industry and which show commercial success of the product from use by those in the industry. This evidenced perspective is indicative of the non-obviousness of my invention.
- 5) This additional exhibit is provided to supplement the previously provided exhibits, which are believed to still be indicative of non-obviousness of the invention for the reasons previously discussed.

6) I have attached hereto as Exhibit J a copy of an letter I received on September 12, 2005 from Tom Donofrio of Builders Prime Window and Supply Co., Inc. The letter states:

a) The Energy Guardian™ has specific benefits for ease of use due to its two piece design.

b) That single piece designs, or two piece designs where the pieces are attached, are “unwieldy.”

c) That designs with hinged lids are unsuitable for many homes as the lid will hit the rafters and not be able to fully open. This is specifically referred to as a “fatal flaw” of hinged lid designs.

d) That the air seal provided by how the lip fits into the frame of The Energy Guardian™ is “far superior” to that in other products.

7) I have attached as Exhibit K a letter I received on December 21, 2005 from George Temme of Honeywell DMC Services, Inc., a business unit of Honeywell International Inc. The Letter States:

a) His company is the sub contractor providing energy saving measures for the New Jersey Comfort Partners low income energy conservation program.

b) This program is sponsored by all 7 utility companies in the state of New Jersey; under the auspices of the state Board of Public Utilities.

c) Products used in this program are subject to stringent standards of performance.

d) *The Energy Guardian™ Kit* is the primary solution for solving the problem of attic sealing as it is a “clearly superior” product.

8) I also wish to recognize that the letter from Vic Alshire, previously provided as Exhibit E to my prior declaration also states:


a) Mr. Alshire has reviewed or used virtually every energy saving product and procedure available.

b) Mr. Alshire states it is his professional opinion, that “there has never been a product to properly insulate and seal these attic accesses until the Energy Guardian.”

c) Mr. Alshire further states that *The Energy Guardian™ Kits* “should be used as a national standard.”

- 9) I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

12/22/05  
Date

  
James B. Melesky  
Inventor of U.S. Patent App. Ser. No. 10/024,478

**BUILDERS PRIME  
WINDOW & SUPPLY CO.**

September 12, 2005

Mr. James B. Melesky  
President  
ESS Energy Products, Inc.  
P.O. Box 400  
Paoli, PA 19301

Dear Jim:

Our firm installs windows and doors in thousands of homes in the Philadelphia area every year. These homes are a combination of both new construction and upgrades to existing houses. Comfort, energy efficiency, durability and ease of use are essential elements of any product that we offer to our clients.

When I learned of your product, I knew from my personal knowledge and experience that it made great sense. I even purchased *The Energy Guardian*™ kit for the pull down ladder in my own home.

I installed the unit in late summer. It has made a big difference in the comfort on the entire 2<sup>nd</sup> floor. In the winter my step son's bedroom was always chilly, but not anymore. It is warmer and the drafts are gone. In the summer, the upstairs is much cooler with the "Guardian." It really works!

We use our attic for storage. There is not much room to maneuver in our attic as is the case with many, many other attics. That is where the design of your products is so practical. The two part design makes it easy for anyone in my family to use. Each piece is light. We can place the lid and frame to the side separately when moving boxes and other such items into or out of the attic. It is easy to return them when we are done.

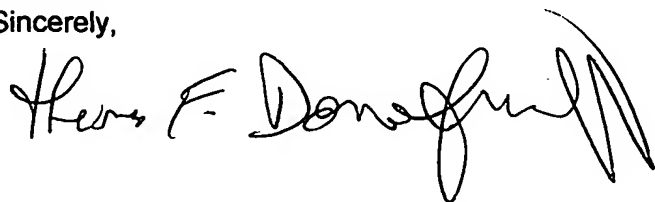
Other products that are one solid unit or two units attached do not make sense. First, it is too unwieldy for my wife or anyone else's to move and there is no room to put such a big unit in my attic and most others. I wouldn't be able to use or recommend products with a hinged lid either. The lid would not be able to fully open as it would hit the rafters in many homes. That is a very important safety and clearance matter and it is a fatal flaw in any design.

It is really important how the lip of the lid fits into the frame. That air seal is far superior to a gasket or light weather stripping that is used in other products. I can imagine the effect of dragging luggage or a box over it a few times- it couldn't last. Your units can clearly last a long time even when used often.

With the practical approach you have with your products and the great results, I can confidently sell them to homeowners and contractors. I know that the product works well and will fit into virtually any home. That way, I don't have to worry about returns.

I recommend *The Energy Guardian* kits to everyone.

Sincerely,



**DMC**

Honeywell DMC Services Inc.

5 East Stow Road Ste E

Marlton, NJ 08053

856 797-0011

856 797-0244 Fax

December 20, 2005

Mr. James B. Melesky  
President  
ESS Energy Products, Inc.  
P.O. Box 400  
Paoli, PA 19301

Dear Jim:

As we close out another successful year, I want to congratulate your firm for the important role it has played in our program.

As you know, we are the sub contractor for the New Jersey Comfort Partners low income energy conservation program sponsored by all the utility companies in the state of New Jersey; under the auspices of the state Board of Public Utilities. We provide a number of upgrades and energy saving measures for thousands of their clients every year throughout the state according to guidelines and procedures mandated by all 7 utility companies in the state.

Our products and measures must meet or exceed stringent standards and our work is subject to review and inspection by third parties.

We use **The Energy Guardian™ Kits** as our primary solution for the program in New Jersey because it is clearly the superior product available in the market today. It is the best solution for our crews, the utility companies and the homeowners.

I look forward to continuing our winning combination with ESS in the coming year.

Yours truly,



George Temme  
Inventory Coordinator